



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 13, 2003

Ms. Susan Camp-Lee  
Sheets & Crossfield  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2003-0976

Dear Ms. Camp-Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#176481.

The City of Round Rock, (the "city"), which you represent, received a request for the following six categories of information relating generally to the hiring of Round Rock's Property Management Coordinator:

1. copies of meeting minutes from every meeting conducted between January 1, 1999, and present, in which the proposed Property Management Team and/or Property Management Coordinator position and/or Building Maintenance were discussed;
2. the name, age, previous position title with salary, and new position title with salary of all City of Round Rock employees which were promoted or hired into newly created positions, between the dates of January 1, 2000, and present;
3. the name, age, previous position title with salary, and new position title with salary of all City of Round Rock employees which were promoted or hired into existing positions, between the dates of January 1, 2000, and present;
4. a copy of Mr. Pete Dominquez's most recent Employee Performance Management Review (job performance review);
5. interview questions, answers, and notes from all interviews with Mr. Pete Dominquez; and
6. The complete financial statements for Bob Bennett and Jim Nuse for the past ten years.

You state that the city does not possess documents responsive to category five and that the city will release documents responsive to category six. You claim, however, that the remaining responsive information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 551.022 of the Government Code expressly provides that the “minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” These are public records pursuant to the Open Meetings Act. Gov’t Code §§ 551.022. Therefore, to the extent the requested meeting minutes were of open meetings, the city must release the requested meeting minutes pursuant to section 551.022. In the event the requested minutes were not of open meetings, the city may withhold them if an exception to the Public Information Act applies.

Next, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov’t Code § 552.022(a)(1), (2), (5). The working papers used to estimate the expenditure of public funds by a governmental body submitted in response to category one, the employee names, titles, salaries, and dates of employment submitted in response to categories two and

three, and the completed evaluation submitted in response to category four are all subject to section 552.022. The completed report must be released to the requestor unless it is confidential under other law or excepted from disclosure under section 552.108.<sup>1</sup> The employee names, titles, salaries, and dates of employment must be released to the requestor unless they are confidential under other law. Further, the city may not withhold the working papers used to estimate the expenditure of public funds by a governmental body if the estimates associated with these documents have been completed, unless such information is confidential under other law. Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not "other law" that makes information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). Therefore, the city may not withhold the working papers used to estimate the expenditure of public funds by a governmental body submitted in response to category one, the employee names, titles, salaries, and dates of employment submitted in response to categories two and three, and the completed evaluation submitted in response to category four from disclosure under section 552.103 of the Government Code. As you do not raise any other exceptions to the disclosure of this information, it must be released to the requestor.

To the extent the information responsive to category one is not the minutes of an open meeting or the estimates to which the working papers relate are not completed, we will consider your section 552.103 claim along with any remaining information. Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

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<sup>1</sup>Because you do not raise section 552.108, we do not address the applicability of this exception to disclosure.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). This office has also concluded that litigation was reasonably anticipated when the potential opposing party filed a complaint with the Equal Employment Opportunity Commission. Open Records Decision No. 336 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You state, and provide documentation showing, that, prior to the city's receipt of the request, the requestor filed a complaint with the Texas Commission on Human Rights (the "TCHR") alleging discrimination. The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.* Based on your representations and our review of the submitted information, we conclude that litigation was reasonably anticipated by the city on the date it received the present request. We also find that the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Thus, the city may withhold the remaining information pursuant to section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release all of the submitted information under section 552.022, with the exception of the ages and "change code" column responsive to categories two and three which may be withheld under section 552.103. Additionally, if the information

submitted in response to category one does not represent the minutes of open meetings, or if the estimates associated with those documents have not been completed, this information may also be withheld under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

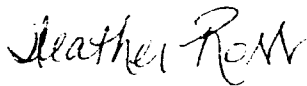
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Ross".

Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 176481

Enc: Submitted documents

c: Mr. Charles Fleet  
10736 Stinnett Mill Road  
Salado, Texas 76571  
(w/o enclosures)